

Proposed Amendments to Chapter 305
Permit By Rule Standards
Draft 9/7/2001

Amend “Introduction”, Section 1(C)(1), as follows:

C. Effective period

- (1) Beginning of period. The PBR becomes effective 14 calendar days after the DEP receives the notification form, unless the DEP approves or denies the PBR prior to that date. If the DEP does not speak with or write to the applicant within this 14 day period regarding the PBR notification, the applicant may proceed to carry out the activity.

There are three exceptions regarding the effective date of an approved PBR:

- (a) Activities listed in Section 10 (Stream crossings) occurring in association with forest management are exempt from the 14 day waiting period.
- (b) Activities listed in ~~Section 2 (Soil disturbance)~~ and Section 10 (Stream crossings) performed or supervised by individuals currently certified in erosion control practices by the DEP are exempt from the 14 day waiting period. To be certified in erosion control practices, an individual must successfully complete all course requirements of the Voluntary Contractor Certification Program administered by the DEP's Nonpoint Source Training and Resource Center.
- (c) Activities that are part of a larger project requiring a permit under the Site Location of Development or the Storm Water Management Acts may not proceed until any required permit under those laws is obtained.

Amend “Soil Disturbance”, Section 2, as follows:

2. ~~Soil disturbance~~ Activities adjacent to protected natural resources

A. Applicability

- (1) This section applies to an activity ~~involving soil disturbance or fill placement~~ adjacent to, but not in:
 - (a) A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or
 - (b) Freshwater wetlands consisting of or containing:
 - (i) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

- (ii) Peatlands dominated by shrubs, sedges and sphagnum moss.

~~NOTE: The Natural Resources Protection Act ("NRPA") regulates activities adjacent to the protected natural resources only if operated in such a manner that material or soil may be washed into them. If existing barriers (i.e. ice berms, retaining walls) or site conditions (i.e. negative slope) are such that material or soil could not wash into the resource, then the activity is not regulated under the NRPA. The use of silt fence and hay bale barriers does not change the law's applicability to an activity.~~

- (2) This section does not apply to an activity where sustained slopes are steeper than 3 horizontal feet: 1 vertical foot (approximately 33% slope) between the normal high water line or upland edge of the protected resource and the soil disturbance.
- (3) Activities that qualify for permit by rule under another section are not required to comply with this section unless expressly stated in that section.
- ~~(4) A soil disturbance activity performed or supervised by individuals currently certified in erosion control practices by the DEP is exempt from the 14 day waiting period required in Section 1(C)(1).~~
- ~~(45)~~ This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- ~~(56)~~ This section does not apply to an activity that does not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements. In most shoreland areas, a 75 or 100 foot undisturbed buffer strip is required between the disturbed areas and the water or wetland.

B. Submissions

- (1) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (2) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.

- (3) A brief narrative explaining why there is no practicable alternative to location of the activity within the 75 foot setback, and how the impact on the remaining buffer and the resource will be minimized.
- (4) A scaled plan or drawing of the area affected, including information such as:
 - (a) The entire property on which the activity will take place, including property lines, the 75 foot setback, and the boundaries or location of protected natural resources such as streams and wetlands;
 - (b) Proposed and existing development on the parcel including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and
 - (c) Any site constraints limiting development beyond the 75 foot setback, such as steep slopes.

It is not necessary to have the plan professionally prepared. However, it must be legible and drawn to a scale that allows clear representation of distances and measurements on the plan.

C. Standards

- (1) No activity or portion of an activity may be located within the 75 foot setback if there is a practicable alternative location on the parcel that would cause or result in less impact on the environment. The following activities are presumed to have no practicable alternative location on the parcel.
 - (a) The planting of vegetation for the purpose of controlling erosion or for establishing a vegetative buffer.
 - (b) The removal or replacement of underground storage tanks when performed in accordance with 38 M.R.S.A. Section 566-A.
 - (c) The placement or replacement of a foundation or supports for a legally existing structure or addition that is not closer to a protected natural resource than the existing structure. However, any fill, other than that required to maintain the integrity of the structure such as foundation backfill, must meet the 75 foot setback standard unless otherwise approved by the DEP pursuant to this section.
 - (d) The closure of a landfill in conformance with the DEP's solid waste management rules.
 - (e) Access ways to the resource.

Division of a parcel of land that occurs after September 1, 2002, and that results in circumvention of the setback requirement may be considered by the department and may be the basis for a denial under this subsection.

- (42) Except for those activities listed in Section 2(C)(1)(a)-(e) above, a 25 foot setback must be maintained between the normal high water line or upland edge of the protected natural resource and the activity. ~~Existing vegetation within the setback zone may not be disturbed.~~ Areas that have slopes of 3 horizontal feet: 1 vertical foot (approximately 33% slope), or steeper, may not be counted when determining the 25 foot setback. Existing vegetation within the setback may not be disturbed except for cutting activity meeting the exemption requirements in 38 M.R.S.A. Section 480-Q(22).

- ~~(2) The setback requirement does not apply to:~~

- ~~(a) The planting of vegetation for the purpose of controlling erosion;~~
- ~~(b) The removal or replacement of underground storage tanks when performed in accordance with 38 M.R.S.A. Section 566 A;~~
- ~~(c) The placement or replacement of a foundation or supports for a legally existing structure or addition that is not closer to a protected natural resource than the existing structure. Any fill, other than that required to maintain the integrity of the structure such as foundation backfill, must meet the 25 foot setback standard; or~~
- ~~(d) The closure of a landfill in conformance with the DEP's solid waste management rules.~~

- (3) Disturbance within the setback must be minimized. The determination of whether a project has been adequately minimized includes consideration of factors such as the following:

- (a) The size, scope, configuration and density of the project as proposed;
- (b) The location of all or part of the project in previously developed areas; and
- (c) The use of alternative project designs to minimize impact on the environment.

- ~~(34) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the 25 foot buffer and the resource:~~

- ~~(a) Staked hay bales or silt fence must be properly installed at the edge of disturbed areas between the activity and the resource ~~area of soil disturbance and the edge of the 25 foot buffer to the resource~~ before the activity begins;~~
- ~~(b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;~~
- ~~(c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;~~

- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence or hay bale installation and site stabilization are available from the DEP.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Fill. a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a water body or wetland.
- (2) Land adjacent to a protected natural resource. Any land area within ~~400~~75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (2-A) Practicable. Available and feasible considering cost, existing technology and logistics based on the overall purpose of the project.
- (3) Structure. Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. Examples of structures include buildings, utility lines and roads.
- (4) Upland edge. The boundary between upland and wetland.

NOTES:

- (1) Section 480-Q(15-A) of the NRPA exempts the installation, removal or repair of a septic system from permitting requirements as of March 1, 1995, as long as the system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Human Services pursuant to 22 M.R.S.A. Section 42(3).
 - (2) The placement of wastewater treatment facilities or disposal systems by people in possession of an overboard discharge license or conditional discharge permit is exempt from the NRPA, subject to certain conditions (see Chapter 596 of DEP Regulations "Overboard Discharges: Licensing, Relicensing, Transfer and Abandonment of Licenses").
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Amend “Intake pipes & water monitoring devices”, Section 3(D)(1), as follows:

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Land adjacent to a protected natural resource. Any land area within ~~100~~-75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.

Amend “Replacement of structures”, Section 4(A)(1), as follows:

A. Applicability

- (1) This section applies to the replacement of an existing permanent structure in, on, or over a coastal wetland, freshwater wetland, great pond, fragile mountain area, or river, stream or brook. Any activity involving structure replacement adjacent to protected natural resources must conform with Section 2 "~~Soil disturbance~~Activities adjacent to protected natural resources". Some activities involving maintenance and repair of a permanent structure may not require a permit (see note 2 at the end of this section).

Amend “Replacement of structures”, Section 4(D)(4), as follows:

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (4) Land adjacent to a protected natural resource. Any land area within ~~100~~-75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.

Amend “ Outfall pipes”, Section 7(D)(4), as follows:

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (4) Land adjacent to a protected natural resource. Any land area within ~~100~~-75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.

Amend “Crossings (utility lines, pipes and cables)”, Section 9(D)(3), as follows:

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (3) Land adjacent to a protected natural resource. Any land area within ~~400~~75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.

Amend “Activities in coastal sand dunes”, Section 16(C)(6), as follows:

C. Standards

- (6) An activity occurring on land adjacent to a coastal wetland, freshwater wetland containing over 20,000 square feet of open water or emergent marsh vegetation, great pond, river, stream or brook must meet the erosion control and setback requirements of Section 2, ~~Soil disturbance~~Activities adjacent to protected natural resources".

Amend “Activities in coastal sand dunes”, Section 16(D)(12), as follows:

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (12) Land adjacent to a protected natural resource. Any land area within ~~400~~75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.